

AMENDED IN SENATE MAY 3, 2006
AMENDED IN SENATE APRIL 18, 2006
AMENDED IN SENATE FEBRUARY 28, 2006

SENATE BILL

No. 1207

Introduced by Senator Alarcon

January 26, 2006

An act to amend Section 708 of, and to add Section 708.5 to, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1207, as amended, Alarcon. Corporations: ~~contested and uncontested elections of directors~~ *uncontested election of a listed corporation*.

Existing law provides that, in any election of the members of the board of directors of a corporation, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares are elected.

This bill would ~~make that provision applicable only to a contested election of directors, as defined; whereas~~ *specify that*, in ~~an any~~ uncontested election of ~~directors~~ *a listed corporation*, as defined, approval by a majority of the shares represented and voting would be required to elect each director, except in certain circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 708 of the Corporations Code is amended to read:

708. (a) Except as provided in ~~Section 301.5~~ Sections 301.5 and 708.5, every shareholder complying with subdivision (b) and entitled to vote at ~~a contested~~ any election of directors may cumulate such shareholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are normally entitled, or distribute the shareholder's votes on the same principle among as many candidates as the shareholder thinks fit.

(b) No shareholder shall be entitled to cumulate votes (i.e., cast for any candidate a number of votes greater than the number of votes that the shareholder normally is entitled to cast) unless the candidate or candidates' names have been placed in nomination prior to the voting and the shareholder has given notice at the meeting prior to the voting of the shareholder's intention to cumulate the shareholder's votes. If any one shareholder has given that notice, all shareholders may cumulate their votes for candidates in nomination.

(c) ~~In a contested~~ Except as provided in Section 708.5, in any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares are elected; votes against the director and votes withheld shall have no legal effect. ~~For purposes of this section, "contested election" means an election in which the number of nominees exceeds the number of vacant positions on the board of directors.~~

(d) Subdivision (a) applies to the shareholders of any mutual water company organized or existing for the purpose of delivering water to its shareholders at cost on lands located within the boundaries of one or more reclamation districts now or hereafter legally existing in this state and created by or formed under the provisions of any statute of this state, but does not otherwise apply to the shareholders of mutual water companies unless their articles or bylaws so provide.

(e) Elections for directors need not be by ballot unless a shareholder demands election by ballot at the meeting and before the voting begins or unless the bylaws so require.

SEC. 2. Section 708.5 is added to the Corporations Code, to read:

708.5. (a) For purposes of this section, “uncontested election” *election of a listed corporation* means an election ~~in which by the shareholders of a domestic corporation that qualifies as a listed corporation under subdivision (d) of Section 301.5 in which, at the time of the election, the number of nominees for the board of directors does not exceed the number of vacant positions on the board of directors to be elected by the shareholders at that election.~~

(b) ~~In an any uncontested election of directors a listed corporation, approval of the shareholders, as specified in Section 153, shall be required to elect a director. Votes against the director and votes marked withheld and returned shall have legal effect. For purposes of Section 153, shares voted against the director or shares voted withheld shall be considered shares represented and voting. However, shares that do not indicate a vote shall not be considered represented and voting.~~

(c) ~~A corporation~~ *listed corporation described in subdivision (a)* may amend its articles of incorporation or bylaws to provide that uncontested elections of ~~directors a listed corporation~~ shall instead be conducted in the manner specified in *subdivision (c) of Section 708*, however, this amendment shall require approval of the outstanding shares, as specified in Section 152.

(d) *Shareholders may not cumulate their votes in accordance with Section 708 in an uncontested election of a listed corporation unless the corporation amends its articles of incorporation or bylaws to provide for cumulative voting pursuant to subdivision (c).*

(e) Notwithstanding subdivision (b) of Section 301, if, in an uncontested election ~~where approval of the shareholders is required of a listed corporation described in subdivision (b)~~, an incumbent director fails to be approved by the shareholders, then the incumbent director shall resign within 90 days *of the date of the election* and the board shall declare vacant the office of that director. ~~The vacancies on the board~~ *A director’s resignation pursuant to this subdivision shall not constitute removal for any*

1 *purpose. A vacancy on the board resulting from a director's*
2 *resignation under this subdivision* shall be filled in accordance
3 with the procedures set forth in Section 305. A candidate in an
4 uncontested election *of a listed corporation* who fails to be
5 approved by the shareholders shall not be appointed to fill ~~a~~ *any*
6 vacancy on the board.

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